

APPEAL NO. 020515  
FILED APRIL 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 6, 2002, the hearing officer resolved the disputed issues by making certain findings of fact and by concluding that the appellant (claimant) sustained a compensable injury in the form of a lumbar strain/sprain on \_\_\_\_\_, notwithstanding that the injury occurred in another state, and that the claimant had disability beginning on April 2, 2001, and continuing through May 28, 2001. The claimant has appealed the disability determination, contending that the evidence establishes her disability from May 29, 2001, through the date of the hearing, and that the hearing officer has misapplied the law in this area. The respondent (carrier) urges in response that the challenged determination is sufficiently supported by the evidence and that the hearing officer's comments in his Statement of the Evidence do not reflect that he has misapplied the law on the disability issue. The findings and conclusions pertaining to the other disputed issues have not been appealed and have become final.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, while working as a truck driver, she injured her low back moving and locking a lever on the truck she was driving for the employer in another state; that she was treated by Dr. F until July 18, 2001, the date she was to start physical therapy (PT), when the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) raising the jurisdictional defense and stopped the payment of her temporary income benefits (TIBs) and medical benefits; that Dr. F told her on her first visit to avoid heavy lifting, strenuous work, and driving; and that she could not afford further treatment until she changed treating doctors to Dr. S, who agreed to provide her with chiropractic care without immediate payment. The claimant further stated that she has not worked since \_\_\_\_\_, because of the injury; that she resigned on March 30, 2001, because the employer told her she "could not go to a doctor and to continue with another load"; that "the doctors have told [her] to be off work"; and that Dr. F had told her she "would be out of work at least 12 months" and would need "extensive [PT]." The claimant's medical records reflect that she underwent lumbar spine fusion surgery, L4-S1, in 1999; however, she acknowledged having checked "no" to "head or spinal injuries" on the employer's health history portion of the physical examination form she signed on December 29, 2000. A Texas Workers' Compensation Work Status Report (TWCC-73), signed by Dr. S on "11/29/2001," states that the claimant's medical condition from the compensable injury has prevented and still prevents her from returning to work as of "11/29/2001" and is expected to last until at least "11/12/2001 [sic]."

The claimant had the burden to prove that she had disability as that term is defined in Section 401.011(16). The Appeals Panel has stated that in workers' compensation

cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer could conclude from the evidence that by May 29, 2001, when the carrier stopped paying TIBs, the claimant's low back strain had resolved and was not a producing cause of her not working after that date. We do not view the hearing officer's comments in his Statement of the Evidence as compelling the conclusion that he misapplied the law on disability and required the claimant to prove her claimed disability with medical evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge